

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DIVISION OF MEDICAL QUALITY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)
against:)

Jay Arthur Greenstein, M.D.)
Certificate No. A-25998)

Respondent.)
_____)

No. D-3754

DECISION

The attached Proposed Decision is hereby adopted by the
Division of Medical Quality of the Medical Board of California as
its decision in the above-entitled matter.

This Decision shall become effective on 8/3/93.
IT IS SO ORDERED 8/3/93.

DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA

By:

Theresa L. Claassen
THERESA L. CLAASSEN
Secretary

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition)	
for Termination of Probation of:)	No. D-3754
)	OAH No. L-59928
JAY A. GREENSTEIN, M.D.)	
)	
Petitioner.)	
)	
)	

DECISION

On May 20, 1993, in San Diego, California, M. Gayle Askren, Administrative Law Judge, Office of Administrative Hearings, State of California, presided over this matter. A quorum of a panel of the Medical Quality Review Committee for District XIV was present, and consisted of Anoush Miridjanian, M.D., chair; Betty Wilkinson, public member; Victor Avedian, M.D.; Peter Shea, D.D.S., nonphysician licentiate of a healing arts board; Maurice Mulville, M.D., on appointment from District XIII; Pierre Haig, M.D., on appointment from District XIII and Mrs. Gloria Schaefer, public member, on appointment from District XIII.

Margaret Lafko, Deputy Attorney General, represented the Attorney General.

Jay A. Greenstein, M.D. represented petitioner.

Evidence was received, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

On November 5, 1992, Jay A. Greenstein, M.D. (petitioner) filed a petition for termination of probation before the Division of Medical Quality, Medical Board of California (Board). The petition was accompanied by the requisite number of verified recommendations. The matter was set for hearing as provided by law, and the present proceeding came on in due course.

II

Following an administrative proceeding, and pursuant to the stipulation of the parties to the administrative proceeding Case D-3754, the Board ordered, effective August 5, 1990, that respondent's certificate A-25998, be revoked; revocation was stayed, 5 years' probation, 60 days actual suspension, he shall provide free medical services on a regular basis to a community or charitable facility or agency for at least 1,000 hours, he shall complete a course in medical ethics, and other terms and conditions.

The discipline was based upon petitioner's admission he had been convicted of a criminal offense substantially related to the practice of medicine, as the result of submitting false and fraudulent claims to the Medi-Cal Program and accepting payment in the amount of approximately \$850.00. The conviction was on four felony counts of presenting false claims and one count of conspiring to defraud the Medi-Cal system.

III

This is petitioner's first application for relief from the discipline previously imposed. He seeks permission to be discharged from further periods of probation. If not terminated earlier, his probation will expire August 5, 1995.

IV

Petitioner is 46 years of age. He first became licensed in California in 1974. He currently practices in Bakersfield, California. He is in compliance with the terms of his probation, having satisfied the ethics education and community service provisions established. He has concentrated on emergency medicine and family practice for the past 20 years.

Petitioner states that 10 years ago he had a problem with billing in his office and as a result was convicted of Medi-Cal fraud. He elaborated that he had been for some time dissatisfied with Medi-Cal administration payment policies to physicians. This angered him and in response he expressed this anger by billing falsely. He denies that his false billings were widespread within the practice. He writes, in the narrative statement, "I never intentionally defrauded the Medi-Cal System."

Petitioner has become Board-certified in emergency medicine while on probation.

Petitioner previously had a temporary medical license in South Carolina. This license has not been extended, in large part because of California's discipline.

Petitioner has regained his privilege to bill for Medicare services. He has no current hospital privileges, because of the probation.

Petitioner wishes to continue to provide urgent care and to get back into emergency medicine. His current practice is within the High Desert Medical Group, a group HMO specializing in urgent care and industrial medicine, located at Bakersfield and Lancaster, California.

There has been one civil medical malpractice case against petitioner and the High Desert Medical Group. It is not clear whether the matter has been resolved. The allegations concerned a patient upon whom an autopsy revealed toxic shock syndrome and staph infection of multiple organs.

Petitioner writes that "even though two and a quarter years have passed of my official medical license probation with the Medical Board of California, I feel I have effectively completed the full five years in terms of the hardship and soul searching that I have experienced since my conviction five years ago."

In deciding to deny this petition, the panel places great weight upon the serious nature of the offenses which led to the probationary period. Furthermore, whereas this petitioner voices a remorseful attitude, nevertheless he denies any guilt and expresses the belief he has already suffered through five years, the equivalent of full probation. These inconsistencies detract from petitioner's credibility. This panel is further disquieted by the civil action pending against petitioner. In sum, this petitioner has not met his burden of proving, by a preponderance of evidence, he should have an early termination of probation. Having found the foregoing to be true, it must be noted that the panel is impressed favorably by the progress petitioner has made during his probationary period: he has been forthright about the civil action against him, he has volunteered community service, and he has exceeded probationary terms.

DETERMINATION OF ISSUES

Petitioner has not established, pursuant to Business and Professions Code section 2307, by a preponderance of the evidence, that his probation should be terminated, as set forth in Finding IV.

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ORDER

By a unanimous vote, 7 in favor, and none against, it is ordered that the petition for termination of probation be denied.

Dated: 6-18-73

Anoush Miridjanian
ANOUSH MIRIDJANIAN, M.D.
Chair, Panel
Medical Quality Review Committee
District XIV
Division of Medical Quality
Medical Board of California
State of California